

No. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, T E X A S
	§	
AMERIDEBT, INC.,	§	
DEBTWORKS, INC.,	§	
INFINITY RESOURCES GROUP, INC.,	§	
AND ANDRIS PUKKE, INDIVIDUALLY,	§	
Defendants.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of AMERIDEBT, INC., DEBTWORKS, INC., INFINITY RESOURCES GROUP, INC., AND ANDRIS PUKKE, INDIVIDUALLY, and for cause of action would respectfully show as follows:

**I. DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3); 190.3(a).

**II. JURISDICTION**

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2003) ("DTPA") upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA.

### **III. NATURE OF DEFENDANTS' OPERATIONS**

3. Defendants provide credit counseling and debt management services to consumers in Texas and throughout the United States. Defendants refer to their service as the “Ameridebt Program” (“the Program”). The Program is advertised as a debt management plan from a non-profit credit counseling organization in which a consumer gives Defendants the authority to negotiate payment terms with creditors and agrees to make one monthly payment to Defendants which in turn will disburse that payment among the consumer’s creditors. The Program also advertises assistance in obtaining a debt consolidation loan. Advertising and soliciting for the Program is done via television, radio, and print media under the name of Ameridebt and it is with Ameridebt that individual consumers sign a contract for credit counseling services. Once a consumer has contracted with Ameridebt, his or her file is transferred to for-profit Defendant Debtworks, which negotiates with creditors, processes consumers payments, and provides all customer service. For-profit Defendant Infinity purports to offer debt consolidation loans to consumers. Defendant Pukke directs and controls this process.

### **IV. DEFENDANTS**

4. Defendant Ameridebt, Inc. (“Ameridebt”) is a Maryland non-profit corporation. Ameridebt was incorporated in 1996 under the name Consumer Counseling Services, Inc. by Pamela Shuster, the wife of Defendant Pukke. In 1997, Ameridebt applied for and obtained tax exempt status as a 501(c)(3) corporation from the Internal Revenue Service, and began holding itself out to consumers as a non-profit entity. Ameridebt does business in the State of Texas and is registered to conduct business in the State of Texas. Defendant Ameridebt can be served with process by serving its registered agent, Paracorp Inc., 800 Brazos Street, Suite 1100, Austin, Texas 78701.

5. Defendant Infinity Resources Group, Inc. (“Infinity”) is a District of Columbia for-profit corporation. Defendant Pukke incorporated Infinity in 1995, and continues to serve as the President and sole shareholder of that corporation. Infinity has done business in the State of Texas, but does not maintain a regular place of business in Texas, nor has it designated an agent for service of process in the State of Texas. This suit arises out of Defendant’s business in this state as more specifically described below. Pursuant to § 17.044 of the Texas Civil Practice & Remedies Code, Infinity can be served by certified mail, return receipt requested, directed to Infinity through the Texas Secretary of State as an agent for service of process at Infinity’s home office at the following address: 13017 Wisteria Drive, #343, Germantown, Maryland 20874.

6. Defendant Debtworks, Inc. (“Debtworks”) is a Maryland for-profit corporation. Defendant Pukke incorporated Debtworks in 1999, and continues to serve as the President and sole shareholder of that corporation. Debtworks was formed via an asset purchase agreement with Ameridebt, in which Debtworks purchased all assets used by Ameridebt in servicing their debt management plans. Debtworks has done business in the State of Texas, but does not maintain a regular place of business in Texas, nor has it designated an agent for service of process in the State of Texas. This suit arises out of Defendant’s business in this state as more specifically described below. Pursuant to § 17.044 of the Texas Civil Practice & Remedies Code, Debtworks can be served by certified mail, return receipt requested, directed to Debtworks through the Texas Secretary of State as an agent for service of process at Debtworks’ home office at the following address: 14132 Stonecutter Drive, Gaithersburg, Maryland 20878.

7. Defendant Andris Pukke (“Pukke”) is an individual and may be served with process at his home, 11509 Dahlia Terrace, Potomac, Maryland 20854. From 1997 to 2000, Pukke used

Ameridebt to generate income for Infinity, by requiring the first payment made by consumers for services from Ameridebt to be made directly to Infinity, as a non-refundable advance fee for a potential debt consolidation loan. Following a District of Columbia lawsuit and settlement which prohibited Pukke from charging advance fees under this scheme, Pukke established Debtworks as an alternative method to shift money out of the non-profit Ameridebt. Since Defendant Pukke's creation of Debtworks, Ameridebt's largest expense has been paying Debtworks to service its accounts. Defendants Ameridebt, Infinity, and Debtworks have all operated at the same address, 12850 Middlebrook Road, Germantown, Maryland 20874. In 2003, Debtworks sold its assets to a new for-profit entity which continues to service Ameridebt's debt management plans, however Pukke, through Debtworks, continues to receive the profits generated by this business.

#### **V. VENUE**

8. Venue of this suit lies in Travis County, Texas for the following reasons:
  - (a) Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Travis County, Texas; and
  - (b) Under the DTPA §17.47(b), venue is proper because Defendants have done business in Travis County, Texas.

#### **VI. PUBLIC INTEREST**

9. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendants have caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this

State. Therefore, the Consumer Protection Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest and at least seven days prior to instituting this action contacted Defendants to inform them in general of the alleged unlawful conduct.

## **VII. TRADE AND COMMERCE**

10. Defendants are engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

## **VIII. ACTS OF AGENTS**

11. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:
- (a) Defendants performed or participated in the act; or
  - (b) Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

## **IX. STATEMENT OF FACTS**

12. Ameridebt advertises the Program on radio and television commercials, as well as print advertisements, throughout Texas and the rest of the United States. These advertisements are directed to consumers who have found themselves burdened by consumer debt, and are looking to better their credit situation. These advertisements claim that:

- a. the Program is able to decrease a consumer's debts by up to 50%;
- b. the Program can decrease the amount of time needed to pay off debts to 3-5 years;
- c. the Program can stop harassing debt collection efforts;

- d. Ameridebt is a credit counseling organization, and an industry leader in providing debt management plans;
- e. Ameridebt's services are available to consumers for free, and any contributions made under the Program are voluntary;
- f. Ameridebt is a trusted non-profit organization;
- g. Ameridebt has a zero-tolerance policy for consumer complaints; and
- h. one of the goals of the Ameridebt Program is to obtain a debt consolidation loan.

13. Consumers responding to advertisements are directed to call an 800 number which connects the consumer to an Ameridebt employee who represents that he or she is a "counselor." In reality, these counselors are salespeople, who are trained to sell the Program. These salespeople do not provide budgeting advice, nor are they trained to perform a detailed analysis of a consumer's income and expenditures in order to offer meaningful advice as to the consumer's unique credit situation. As a result, the salespeople may encourage consumers to enter into the Program even where another solution, such as bankruptcy, may be more appropriate.

14. Ameridebt represents that because it is a non-profit, it will be able to work with creditors to obtain reduced interest rates and monthly payments which individuals will not be able to obtain themselves or by using a for-profit organization. Consumers complaining to Ameridebt and to the Office of the Texas Attorney General allege that these representations left them with the impression that Ameridebt made little or no money from them, and that they would receive special benefits and could expect better service by working with a non-profit. Ameridebt however fails to disclose to consumers that the company generates tens of millions of dollars each year in revenue.

In 2001, Ameridebt generated over \$50 million in revenue; in 2002, Ameridebt generated over \$70 million in revenue. In each of those years, approximately \$10 million was spent in advertising. Ameridebt further fails to disclose that all contact with creditors is actually performed by the for-profit Debtworks.

15. Ameridebt seeks direct “contributions” from the consumers who participate in the Program. Ameridebt seeks two types of contributions - an “initial contribution” and a “monthly contribution.” Ameridebt’s salespeople are trained to represent to consumers that as a non-profit, the initial and monthly contributions from consumers are necessary for Ameridebt to stay in business. Consumers complaining to Ameridebt and to the Office of the Texas Attorney General allege they have been misled as to the voluntary nature of these fees. In fact, Ameridebt, despite calling the payments “voluntary contributions,” maintains different minimum requirements for a consumer depending on whether or not he or she pays money to Ameridebt. Other consumers allege that the payments are not in fact voluntary at all but rather are mandatory. For a time, Ameridebt’s contracts themselves provided no mechanism for a consumer to opt-out of these “voluntary” fees, such that any consumer signing an Ameridebt contract would then be forced to agree to pay these fees. Still other consumers complaining to Ameridebt and to the Office of the Texas Attorney General allege that they did not understand they were paying any amounts to Ameridebt as contributions. The initial contribution assessed by Ameridebt is equal to the consumer’s monthly payment under the Program, so Ameridebt keeps the consumer’s first payment as the “contribution.” As a result, after making two or three payments to Ameridebt, consumers allege that only then do they realize that their first payment was kept by Ameridebt. At this point, these consumers’ creditors have assessed late fees and penalties because of the month that they did not receive payment from

the consumer. Still other consumers have complained that even when they have explicitly represented to salespeople that they are not willing to contribute, Ameridebt still assesses those charges to them.

16. Salespeople are not authorized to sell the Program to a consumer who refuses to make contributions, rather a manager must approve the sale. As a result, the Ameridebt salespeople on occasion will advise consumers to take actions that benefit Ameridebt by increasing their contributions, but do not benefit the consumer. For example, in some instances Ameridebt advises consumers to include accounts in the Program for which Ameridebt knows it cannot in any way reduce the interest rate or monthly payment. The salespeople represent to consumers that it is still advantageous for them to include these accounts, since the consumer will then still be able to write one check to Ameridebt and not have to pay the other creditors separately. However it is not clearly disclosed to the consumer that by including such an account, the consumer's initial contribution is increased by an amount equal to that account's monthly payment, and their monthly contribution is increased. The effective result is that the consumer will pay much more for that account under the Program than they were paying before they contacted Ameridebt.

17. Once a consumer decides to enroll, the Ameridebt salesperson sends the consumer a copy of the Ameridebt contract for him or her to sign and return. Ameridebt fails to disclose that once the contract and first payment is received, Ameridebt will have no further contact or involvement with that consumer. At that time, the consumer's account is transferred to Debtworks. The relationship between Ameridebt and Debtworks is not disclosed to the consumer, and the identity, involvement, and for-profit status of Debtworks is never known by the consumer.



Throughout the process, consumers are led to believe that at all times they are dealing with a non-profit organization.

18. When consumers contact Ameridebt's toll free number to complain about the Program, Ameridebt represents that the consumers must now call a long distance number. Unbeknownst to the consumer, when calling this long distance number they are now calling Debtworks. Consumers complain of long waits on hold, resulting in high long distance bills. Once consumers are able to contact a Debtworks employee, they further complain that the employee provides little assistance in remedying their complaint.

19. Debtworks "negotiates" with the consumer's creditors, a process which it represents to consumers takes approximately 30 days. These negotiations consist of Debtworks sending out a written proposal to each creditor on the consumer's behalf, which includes a proposed reduced payment and interest rate. Consumers complaining to Ameridebt and to the Office of the Texas Attorney General have alleged that this "negotiation" process often takes more than 30 days, which leaves many consumers' accounts unattended. The result is that the consumer continues to pay their monthly payments into the Program, but not all creditors receive disbursements. Debtworks fails to disclose this information, which results in consumers falling behind on their accounts and incurring additional late charges and penalties. Other consumers complain that although they make timely payments to Debtworks, Debtworks fails to disburse those payments in a timely manner, resulting in additional charges and penalties. As a result, consumers allege that participating in the Program actually leaves the consumer in a worse credit situation than they were before entering the Program. Consumers further allege that as a result of these problems, they continue to be subject to debt collection efforts by their creditors.

20. Defendant Infinity represents to consumers that after a number of timely payments under the Program, they will be able to receive a debt consolidation loan. Because the loan is a “goal” of the Program, Infinity uses this promise as a means to keep consumers enrolled in the Program for several months. Some consumers complaining to the Office of the Texas Attorney General allege that even after making timely payments they did not get referred to Infinity, and that even if they did get referred to Infinity it is difficult to obtain this consolidation loan. In fact, of the over 19,000 consumers that have entered into the Program in Texas, only approximately 50 have actually obtained a consolidation loan from Infinity. Consumers further allege that the loans can actually result in increased debt for the consumer, as they carry with them greater interest rates than those currently charged by the consumer’s creditors. Infinity makes payments directly to Ameridebt as part of the loan referral process.

## **X. VIOLATIONS OF DTPA**

21. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

22. Defendants, as alleged and detailed above, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

- (a) Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA;
- (b) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of § 17.46(b)(2) of the DTPA;

- (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have in violation of § 17.46(b)(5) of the DTPA;
- (d) Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA; and
- (e) Failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

#### **XI. BREACH OF FIDUCIARY DUTY**

23. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

24. By soliciting and collecting funds from the general public under the guise of applying the funds for specific charitable purposes, Defendants hold such funds in trust for the benefit of the public and for the charitable causes for which the funds were ostensibly solicited, and thereby owe a fiduciary duty the citizens of the State of Texas. Thus, all monies, pledges, and other property received by Defendants as a result of their charitable solicitations, and all assets purchased with such monies, constitute charitable funds to be used for the specific charitable purposes for which they were solicited. As a result of their oral and written solicitations, Defendants are trustees of such charitable assets and are charged with fiduciary duties with regard to said assets. Defendants, as

described in detail above, have breached, and will continue to breach their fiduciary duties in this regard and have caused, and will continue to cause immediate and irreparable harm by failing to administer these charitable assets in a prudent and reasonable manner to assure that the assets will be used to the maximum efficiency for their intended purpose.

## **XII. PRAYER**

25. By reason of the acts and practices described herein above, Defendants have violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

26. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants, from engaging in the following acts or practices:

A. Misrepresenting the existence, absence, terms, or amounts of any fees contributions, monies, or other costs, whether monetary or in kind, associated with the goods or services; including, but not limited to:

1. In all communications with consumers describing any terms or conditions of any offer to provide any such goods or services, including, but not limited to, mailings, electronic mailings, advertisements, sales presentations, contracts, or Web sites, failing to clearly and conspicuously disclose:

a. that the consumer is required or requested to pay any fees, contributions, monies, or other costs, whether monetary or in kind, to

anyone in order to obtain a good or service, if such is the case, and whether the payment is mandatory or voluntary;

- b. if such is the case, that any such fees, contributions, monies, or other costs, will be deducted from the first payment made by the consumer for the good or service;
- c. if such is the case, that any such fees, contributions, monies, or other costs, will not be disbursed to creditors, regardless of whether the money is deemed a fee, a contribution, or otherwise, and the person to whom that money will be paid; and
- d. what effect the consumer's decision not to pay fees, contributions, monies, or other costs, whether monetary or in kind, has on the terms, other conditions, or benefits of the goods or services.

2. In all contracts or other written agreements with consumers to provide any goods or services, failing to clearly and conspicuously disclose:

- a. the total amount of money the consumer will be required to pay in connection with the goods or services;
- b. the specific amounts the consumer will be required to pay as an initial payment and/or on a periodic basis, as applicable;
- c. the specific portion of the initial payment and/or periodic payment that will be treated as a fee or contribution to Defendants, as applicable;

- d. the relationship, including but not limited to financial arrangements, between a non-profit defendant and any for-profit entity that performs a substantial amount of the service offered, if such is the case; and
    - e. if such is the case, the fact that the amount the consumer is required to pay on a periodic basis is an estimate contingent upon acceptance by third parties and that the final amount may differ from this estimate.
  - 3. Representing that a fee or contribution is “voluntary” if it is in fact mandatory.
- B. Misrepresenting that counseling regarding the consumer’s particular financial or credit situation will be provided; including, but not limited to, representing that:
  - 1. Defendants perform credit counseling, or employ credit counselors, if they do not;
  - 2. a consumer should engage in any action or omission that will directly result in that consumer incurring additional debt; and
  - 3. a consumer should misrepresent his or her financial situation, including current income and expenditures, to any of his or her creditors.
- C. Misrepresenting that no profits are being made from the goods or services provided; including, but not limited to:
  - 1. In all communications with consumers describing any terms or conditions of any offer to provide any such goods or services, including, but not limited to, mailings, electronic mailings, advertisements, sales presentations, contracts,

or Web sites, representing that they are a not for profit entity, unless Defendants clearly and conspicuously disclose:

- a. the fact, if such is the case, that a substantial amount of the service is performed by a separate for-profit entity; and
- b. the fact that the consumer makes payments to a for-profit entity for the service, if such is the case.

2. Misrepresenting that, as a non-profit entity, a defendant is able to provide consumers with benefits otherwise not available if operating as a for-profit entity unless that defendant substantiates that it directly performs, or an affiliated non-profit entity performs, all of the services and goods represented.

D. Misrepresenting the terms, costs, other conditions, benefits of, or any other matter regarding the goods or services; including, but not limited to:

1. Prior to accepting payment from a consumer, failing to clearly and conspicuously disclose any specific actions the consumer must take or obligations the consumer must meet in order to fully use and enjoy the goods or services offered;
2. With regard to negotiating with a consumer's creditors:
  - a. Misrepresenting Defendants ability to cease any collection efforts by creditors;
  - b. Misrepresenting Defendants ability to negotiate with creditors; and
  - c. Failing to disclose the terms, conditions, consequences, or minimum requirements of any negotiations with creditors;

3. With regard to debt management plans offered by Defendants:
  - a. Misrepresenting the costs of, or benefits obtained by, participating in the debt management plan;
  - b. Failing to immediately contact a consumer to inform them of any proposed changes to their debt management plan; and
  - c. failing to make timely payments to a consumer's creditors pursuant to the debt management plan.
4. Misrepresenting a consumer's ability to obtain, or the benefits associated with, a debt consolidation loan.

27. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order each Defendant to pay to the State of Texas:

- (a) Civil penalties of up to \$20,000.00 per violation of the DTPA;
- (b) Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- (c) All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

28. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.



Respectfully submitted,

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